



HOW TO PREPARE FOR YOUR HEARING WITH THE COMMISSION ON COMMON OWNERSHIP COMMUNITIES

Prepared by:

**Montgomery County Commission on
Common Ownership Communities
100 Maryland Avenue, Room 330
Rockville, Maryland 20850
www.montgomerycountymd.gov/ccoc**

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WHAT YOU *REALLY* NEED TO KNOW ABOUT PREPARING FOR YOUR CCOC HEARING:

- 1. You are going to be legally bound by any decision made in the case. Therefore, make the best case you can.**
- 2. Once you receive the summons you have only 15 days to gather evidence from the other party. Start to prepare NOW.**
- 3. READ YOUR ASSOCIATION'S GOVERNING DOCUMENTS. You need to know what they require of each side.**
- 4. You are not required to have a lawyer; but think about consulting one to review your case and to give you advice on what the law is, what evidence you might need, and how to present your case.**

This booklet offers general information. It is not intended to give legal advice on specific cases.

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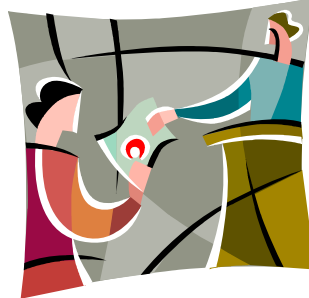


If you are reading this booklet, your dispute has probably been referred by the Commission on Common Ownership Communities (CCOC) to a hearing panel for a decision. This booklet tells you what happens during this process and helps you to prepare for your hearing.

The decisions of the CCOC's hearing panels are legally binding on the parties to the dispute. This means that the parties must obey the ruling unless it is reversed on appeal. The County Government can take legal action to enforce CCOC orders. Therefore, you should put on the best case you can at the hearing. Studying this booklet carefully will help you do that.

1. THE SUMMONS

The hearing process begins when the CCOC votes to accept a dispute and refer it to a hearing panel. The CCOC staff then issues a *Summons and Statement of Charges*. The *summons* is an order from the CCOC to both parties to come to a hearing and to bring relevant documents with them.



The summons contains important information, including:

- The date and place of the hearing;
- the issues to be resolved at the hearing;
- the names of the 3 members of the hearing panel;
- the right to object to a panel member for good cause;
- the right to conduct discovery (see below);
- the right to request subpoenas;
- Other rights under the County's Administrative Procedures Act.

Read the summons carefully, and use it to begin planning for your hearing.

The summons comes with a copy of the original complaint form and copies of County Code Chapter 10B and Code of Montgomery County Regulation (COMCOR) Section 10B.06.01. Read these also. The Regulation gives you detailed information about what happens during the hearing process.

2. COMMISSION EXHIBIT 1

In order to make it easier for both parties to prepare for the hearing, and to simplify the record, the CCOC prepares an official record of the case called Commission Exhibit One ("CE1"). The staff prepares CE1 as soon as it issues the summons, and this file contains the history of the dispute up to the date of the summons in



chronological order, beginning with the filing of the complaint. It includes the complaint, the answer, relevant documents filed by the parties, the governing documents of the association, official documents drafted by the staff during the case, and other information which the staff believes is relevant to the dispute. When CE1 is ready the staff posts it online for the use of the parties

and the hearing panel. (Access to the file is protected by a password, which the staff provides only to the parties and the panel.)

At the hearing, the panel chair will introduce CE1 into evidence. The parties can then object for good cause to any document contained in CE1. Likewise, the parties can introduce into evidence, as part of their own case presentations, any documents which are not already part of CE1. A party who wishes to introduce new documents, not already part of CE1, must bring 5 copies of each such documents to the hearing for the official record and for the use of the hearing panel and the other party.

Both parties can use CE1 as part of their own cases simply by referring to the proper page number of CE1. This way, the parties do not have to bring numerous documents to the hearing.

The staff sends the link to the online copy of CE1 several weeks before the hearing. Take the time to review it carefully and

to become familiar with it. Look for the documents that you can refer to as part of your own case.

If a party does not have internet service, that party can request a paper copy of CE1 or visit the office to inspect it.

3. DISCOVERY



“Discovery” is the right to obtain evidence and to find out what the other party’s evidence might be. Discovery includes the right to serve Interrogatories and Document Requests on the other party, and to request subpoenas for witnesses. *You must file your discovery requests within 15 days after the date of the summons.*

Interrogatories. You have the right to send not more than 10 written questions to the other party, which it must answer within 15 days in writing and under oath. The panel chair must approve the requested interrogatories.

Document Requests. You also have the right to ask the other party to give you copies of, or the right to see, up to 20 different documents. Again, it must do so within 15 days of your request. No approval from the panel chair is required for document requests.

The best use of interrogatories and document requests is to get information that you do not already have or cannot easily obtain from other sources. For example, one common use of interrogatories is to ask the other party to identify all the witnesses it knows of who have knowledge of the relevant facts; and a good use of document requests is to inspect all the documents the party

will use at the hearing. Interrogatories can also be used to have a party list all the facts it intends to present at the hearing as part of its case or defense.

The other party has the right to present you with interrogatories and requests for documents, and you must answer them within 15 days. If a party does not cooperate, the hearing panel can impose penalties on it or even dismiss that party's case entirely.

A party can object to the other party's discovery requests for good cause, and the panel chair will decide such disputes.

All discovery requests and answers should be in writing and sent directly to the other party, with a copy sent to the CCOC staff. All objections should be in writing and sent to the CCOC staff, with a copy to the other party. Be sure to state on the objection that a copy has been sent to the other side and the date it was sent.

Subpoenas.

The parties can also request that the hearing panel order a witness to come and testify at the hearing. Such requests must be in writing and made within 15 days after the date of the summons. The subpoena request should be sent to the staff, with a copy to the other party, and it should give the name and address of the witness and a short statement of the relevance of the witness's testimony. If the witness is not a member or employee of the association, some panel chairs will require the person requesting the subpoena to state how he will pay the witness's fee. (The CCOC does not pay witness fees.) The panel chair will decide on subpoena requests.



4. MOTIONS, REQUESTS, LETTERS, etc.

Any request for action by the hearing panel or the CCOC—such as complaints that the other party has not responded to discovery requests, or for additional time to do something, or for a change in a hearing date— should be made in writing and sent to the CCOC staff with a copy to the other party. Be sure to state that you sent a copy to the other party as well. Make your request as clearly as possible and give your reasons. If you send a request by email, send a copy of it to the other party.

Never attempt to contact a panel or CCOC member directly concerning any case pending before the CCOC. Send all communications to the staff, who will deal with them appropriately.

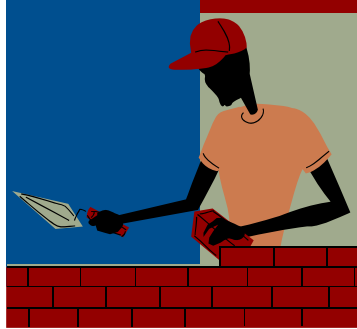
5. PRE-HEARING CONFERENCES.

Either party may request a pre-hearing conference before the panel chair. The panel chair can also order such a conference if he or she thinks one will be useful, especially in complex disputes. Such conferences can be used to clarify the exact issues to be heard at the hearing and to determine what witnesses and evidence will be allowed.



The panel chair can also call hearings to rule upon motions submitted by either party.

6. PUTTING YOUR CASE TOGETHER.



Putting a case together is like building a house with bricks. You do it piece by piece. You will assemble your case using your association's rules, your witnesses, your own testimony, your documents and your photographs as the building blocks. Some of these pieces you will have already, some you will have received in "discovery" (see Section 3), and some you may have gathered through your own research and investigation.

The starting point is to read your association's own rules from cover to cover. These rules often contain specific requirements for the board to follow and for the association members to follow. You want to make sure that YOU followed the rules, and you might find out by reviewing the rules and comparing them to the documents in the file that the other side did not do something that it should have done.

Organize your case. Don't jumble all your facts together in one lumpy pile. List them chronologically and by the separate issues involved in the dispute if there is more than one issue. And don't rest your case simply on what you already have. Think about whether you should be out trying to gather more facts on your own.

Examples. Suppose you are a homeowners association trying to prove that the other party installed a fence without approval and in the wrong style. You will want documents such as: a) a copy of the rules requiring permission for changes; b) a copy of the rules on fence design; c) photos of the fence as built; and d) letters that show the HOA gave all the notices and due process that its rules require. You will also want other evidence, such as: a) a witness who can testify whether the HOA received

any application for the fence, and if so, how the HOA responded; b) a witness who can testify about why the fence as build does not meet the community standards; and c) a witness who can testify about how and why the board made its decision on the dispute.

If you are a homeowner claiming that the board improperly adopted a rule, you may want to gather such documents as: a) the association's own requirements for the adoption of rules by the board or the membership; b) the rule as adopted; c) the minutes of the board meetings at which the rule was discussed and voted upon; and d) any notices to the members about the rule. You may also need the testimony of witnesses who can add important facts not shown by the documents (such as that a document was not sent out on the date listed on the document).



If you are a homeowner who claims the board is not enforcing the rules consistently and equally, you may want to gather evidence to show: a) what other homes in the community have the specific violations; b) photos of such homes and the dates of the photos; c) a copy of the rules involved; d) documents showing that the board knew about the violations; and e) documents showing how the board responded to complaints about the violations (or did not respond), such as meeting minutes, violation notices, and written decisions concerning the violations.

These are only examples. If you need advice on how to prove your case, we recommend that you consult a lawyer.

7. PLANNING TO PRESENT YOUR CASE.



While you are waiting for your hearing, you should be thinking of how you will present your complaint or your defense at the hearing. We suggest that you sit down for an hour or two and start **organizing** your evidence and **planning** your own testimony and the questions you will ask the witnesses.

For each issue in your case:

1. Write down the main points of your own testimony in chronological order so you don't forget what you really need to say, and make notes of each exhibit that you want to refer to as part of your own testimony .
2. Write down who your witnesses on that issue will be and what questions you want to ask each witness. Also for each separate witness, write down what exhibits you will want to ask him or her about at the hearing. If you want to require a reluctant or important witness to attend, you must ask for a subpoena. If you want friendly witnesses to come to testify be sure to make arrangements with them beforehand. If there are any witness fees, you have to pay them yourself, the CCOC does not pay witness fees.
3. Make a list of, and have ready in order, each document and photo you wish to use as evidence to prove that point. (Remember that documents already in CE1 can be referred to simply by page number, but if you wish to use any other documents you must have 5 copies of each one to take to the hearing. You will call your new documents "Complainant's (or Respondent's) Exhibit 1" etc.)
4. Think about whether there is any gap in your case, or missing evidence, and try to deal with that before the hearing.

Plan your responses to the other party's claims. (If you read CE1 carefully, you will have a good idea what those are.)

1. Write down the points you wish to make in answer to the arguments or claims the other party is likely to make against you. If necessary, make a note of the specific exhibits (or pages in CE1) that you will use as part of your response.
2. Write down the questions you want to ask of the other side's witnesses as part of your right of cross examination. (Avoid argumentative questions and try to stick to gathering facts.) Again, make a list of the documents or exhibits you want to refer to in connection with those questions.
3. Consider whether you should ask the other side's witnesses any questions at all. You only want to ask questions that are likely to result in answers that help your case. You don't want to ask questions that are likely to result in answers that merely repeat information that helps the other side's case and hurts yours.

Once you finish your plans to present your own case and to respond to the other side's case, write down a short (5 minutes maximum) summary of your case and the evidence that supports it. You may want to present a short summary orally to the panel at the close of the evidence at the hearing.

Plan to present your case in one hour at most. This time limit is not required. But a well-organized case that gets to the point can usually be presented in that amount of time and it has a better chance of holding the panel's attention.



8. THE HEARING

CCOC hearings usually take place on Wednesday or Thursday evenings, beginning at 6:30 PM at 100 Maryland Avenue in Rockville. The hearing panel will consist of 3 persons. The CCOC will supply a court reporter, but does not usually request a printed transcript. (Parties can order printed transcripts at their own cost.)

Before the hearing:

- Know what your case is going to be.
- Make 5 copies of any new documents you intend to offer into evidence which are not already part of CE1.
- Bring an interpreter if you need one.
- Plan to arrive early (at least 15 minutes early, preferably 30) so that you set up your files and exhibits, talk to your witnesses and mentally prepare yourself.
- Bring a note pad and extra pen.
- You can bring bottled water or soda if you need it.

During the hearing:

- Stay calm!
- Keep your presentation limited to the issues listed in the summons.
- Be to the point, but don't leave out important facts.
- Don't waste time on irrelevant or minor issues.
- Don't interrupt or argue with the witnesses! If you disagree with a witness's testimony, make a note of it. You will have a chance to deal with it later as part of your own case or in "rebuttal" (see next page).
- Don't get stuck in rambling arguments. Know in advance what you have to say.
- Don't guess or speculate in your testimony. Stick to the facts of what you yourself know and be specific.

The order of the hearing:

1. Panel chair's opening statement and swearing-in of all witnesses who will testify.
2. Opening statements by each party (optional)
3. Complainant's case
 - a) testimony of each witness and offering new exhibits into evidence,
 - b) cross examination of each witness by Respondent,
 - c) cross examination of each witness by panel members.



4. Respondent's case

- a) testimony of each witness and the offering of new exhibits into evidence,
- b) cross-examination of each witness by Complainant,
- c) cross-examination of each witness by panel.

5. Complainant's rebuttal testimony (this is strictly limited to taking evidence or testimony that disproves or corrects any of the evidence offered by Respondent—it is not used to repeat or add to the case Complainant already presented).
6. Closing arguments by Complainant and then by Respondent (to summarize their cases).
7. Closing statement by panel chair.

Unless otherwise ordered by the panel chair, the record of the case closes when the hearing is over, and the parties cannot offer new evidence or arguments after that time. If a party wants to offer new evidence or arguments after the hearing it must ask that the panel "leave the record open" for that purpose before the hearing ends.

The panel usually does not state what its decision is at the close of the hearing. It will do so later when it releases its written Decision and Order (see next page).

9. AFTER THE HEARING

The hearing panel will write its decision and submit it to the Office of the County Attorney for review. When a final Decision and Order has been approved, the CCOC staff will send it by certified mail to the parties. The final decision will either dismiss the complaint, or it will contain an order to one or both of the parties to do something by a specific date. The final decision is legally binding on both parties unless reversed on appeal, and the County can file a civil action in the District Court to enforce the decision if necessary.

A party can appeal a CCOC decision to the County's Circuit Court under Title 7, Chapter 200, "Judicial Review of Administrative Agency Decisions" of the Maryland Rules. (The Rules are available in all County libraries as part of the Maryland Code.) **A party must file its appeal within 30 days after the CCOC issues its decision.** The party filing an appeal *must* order and pay for a hearing transcript, and give a copy of that transcript to the CCOC staff so that the staff can file a copy of the official record within 60 days after the appeal is filed. Otherwise, the Court will dismiss the appeal.

Circuit Court appeals do not involve new trials. Instead, the judge will review the official record of the case and decide if the facts in the record support the CCOC's decision, and if the CCOC panel correctly interpreted the law. The judge usually schedules a 30-minute hearing on the appeal before making a decision.

A party can also ask the panel to "reconsider" its decision. In most cases, such a request must be filed within 10 days after the decision. In exceptional cases, however, such as those involving a change in the law, or a change in circumstances, or the discovery of an important new fact that



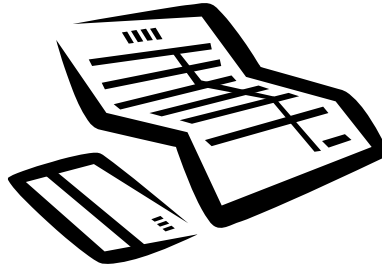
could not have been brought up at the hearing, a party can file a motion for reconsideration up to 30 days after the decision is issued. A motion to reconsider that merely attempts to re-argue the same evidence and issues that were dealt with at the hearing is unlikely to succeed.

Do not ask the CCOC staff to assist you with your appeal or motion to reconsider. If you want to know the procedures for appeals you must read the Court's rules. There is no special format for motions for reconsideration, but they must be received by the CCOC on time, with a copy delivered to the other party.

Occasionally, a panel will state in its Decision that it "retains jurisdiction" over the case until further notice. Panels usually issue such Decisions when they have ordered a party to do something and want to supervise how well the party obeys the order. Such Decisions are *not final*. Once the panel finds that the party has properly complied with its first Decision, it will issue a final Decision and Order that specifically states that either party has the right to appeal it under the rules of the courts for appeals from decision of administrative agencies.

10. ATTORNEYS FEES

Normally, each party pays its own legal fees in CCOC disputes, and the loser does not have to pay the legal fees of the winner. There are two exceptions to this rule.



The first exception is that the hearing panel can penalize a party who has filed a frivolous complaint, has not acted in good faith during the CCOC dispute, has unreasonably delayed the progress of the case, or has unreasonably refused to take part in a mediation session. Such a penalty could include an order that the party pay part or all of the other side's legal fees.

The other exception is that a hearing panel can award fees if the association's own rules require that party to pay legal fees. For example, if the association has filed a complaint to force a homeowner to remove a shed that was built without permission, and if the association's own rules say that when the association takes legal action to force a member to obey the architectural rules and wins, the member must pay the association's attorneys fees, then the association can ask the hearing panel to include in its final decision an order that the losing member must not only remove the shed but reimburse it for its legal fees. The hearing panel will verify what the association's rule states and will make its own decision on what is a reasonable attorney fee for the dispute.



11. RESOURCES

Chapter 10B of the Montgomery County Code, “Common Ownership Communities,” and COMCOR (Code of Montgomery County Regulations) Chapter 10B.06.01, are included with every summons. Also relevant is Chapter 2A, “Administrative Procedures.” They are available in all County libraries and are also available online through the “Services” section of the website of the Office of the County Attorney. You can find this website by going to www.montgomerycountymd.gov and clicking on the “Departments” link on the left side of the home page.

The Maryland Condominium Association Act, the Maryland Homeowners Association Act, and the Maryland Cooperative Housing Corporation Act, are part of the Maryland Code and are also available in all County libraries. They can also be found online through the publisher’s website, which is www.michie.com. Look for “Maryland Code.” The Condominium Act is Title 11 of the “Real Property Article” and the HOA Act is Title 11B of the same Article. The Cooperative Housing law is Subtitle 6B of Title 5 of the “Corporations and Associations” Article. You should also be aware that all these associations may be subject to certain provisions of the Corporations and Associations Article.

You may also want to read past decisions of the CCOC, which are online at its website.

A useful legal guide is *Condominium and Homeowner Association Practice* by Wayne Hyatt, which you can find sold online or by the American Law Institute, 4025 Chestnut St., Philadelphia, PA 19104-